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TO RUEHC/SECSTATE WASHDC PRIORITY 4642
INFO RUEHZL/EUROPEAN POLITICAL COLLECTIVE
RHMFISS/EUCOM POLAD VAIHINGEN GE
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C O N F I D E N T I A L SECTION 01 OF 03 ANKARA 002958

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E.O. 12958: DECL: 12/14/2017
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SUBJECT: TURKEY: NEW JUDICIAL APPOINTMENTS LAW IRKS SECULAR
ESTABLISHMENT

REF: ANKARA 2731

Classified By: Political Counselor Janice G. Weiner, reasons 1.4 (b),(d)
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11. (C) Summary: President Gul's midnight signing of a new law governing the selection process for prosecutors and judges brought sharp criticism from a legal establishment that sees the move as a challenge to its independence by the ruling Justice and Development Party (AKP). The truth is more nuanced. The law codifies prior regulations and establishes a mechanism to allow private attorneys to enter the judiciary's ranks. The MOJ sees the measure as critical to help fill over 4000 vacant positions. Reform-minded contacts from academia, private practice, and civil society believe the law will infuse new blood and fresh ideas into a backward judiciary. The new law may help spur badly needed judicial reform but is unlikely fundamentally to alter the composition of the judiciary anytime soon. End summary.

GOT Enacts Controversial Law on Judges and Prosecutors

12. (SBU) The Turkish Parliament recently passed, and President Gul signed a new Law on Judges and Prosecutors that codified existing regulations governing selection of judges and prosecutors. It also expanded the candidate pool to include private attorneys. The Union of Turkish Bar Associations organized a December 9 rally in Ankara's Tandoğan square that drew thousands of lawyers from bar associations, law faculties, and NGOs to protest the law's expansion of the candidate pool, as well as the requirement that all candidates take an MOJ-administered oral exam. Keynote speaker Ozdemir Ozok, President of the Union of Turkish Bar Associations, accused President Gul of acting as an AKP official instead of an independent President, representing all of Turkey.

13. (SBU) Minister of Justice Mehmet Ali Sahin defended the law during a December 11 "N TV" roundtable discussion, arguing it was necessary to begin to fill 4,062 vacant posts for judges and prosecutors. Sahin rebutted claims that the law would politicize the judiciary, noting that it merely codified existing regulations and practice. The MOJ had administered an oral exam since 1934, and in the past had administered the written exam as well. Sahin claimed, "As long as I'm the Minister of Justice, I won't allow the shadow

of politics to be case over the judiciary."

New Law Introduces Few Changes

14. (SBU) Didem Ulusoy, the EU Commission's legal expert in Ankara, explained to us that the new law codifies the existing exam practice. Upon graduating, law students had to choose one of two career paths: become a private attorney or join the judiciary (judges and prosecutors). Those who chose to be attorneys could not later transfer into the ranks of the judiciary. Those who entered the judiciary would be administered a written exam by the High Council of Judges and Prosecutors ("High Council") -- a nominally independent body that oversees selection, assignment, promotion, and all other aspects of prosecutorial and judicial careers -- and an oral exam administered by five MOJ officials and two officials from the Justice Academy in Ankara. Candidates who achieved a required score then received one year of training at the Justice Academy, after which the High Council assigned them to judicial positions throughout the country.

15. (SBU) The new law, per Ulusoy, also expands the candidate pool, allowing private attorneys with five years of legal experience who are under age 35 to sit for the written and oral exam. The law increases to 70 percent the weight given to the written exam and sets forth what specifically the oral exam tests, with a focus on analytical and oral argument skills. The law also makes it more difficult to expel a judge or prosecutor from the profession: an official may be expelled only when the High Council determines he committed an act that undermines the honor and dignity of the

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profession, and for which the law provides no other appropriate remedy.

Critics: Law an Affront to Judicial Independence

16. (C) President of the Union of Turkish Bar Associations Ozdemir Ozok told us he believes the new law contravenes the fundamental Turkish constitutional principle of judicial independence. His Union has stood against the newly-codified regulations since their introduction following promulgation of the 1982 constitution. Instead of diminishing the MOJ's role, he sees PM Erdogan on a mission to gain total control of the government by penetrating the judiciary -- the only branch his AKP does not yet control. Allowing the MOJ to continue its role in selecting new judges and prosecutors by presiding over an oral exam is, he believes, Erdogan's vehicle to accomplish that. Ozok also believed AKP's failure to seek input from civil society or bar associations, as well as Gul's late-night (upon his return from foreign travel) signing of the law were further evidence of AKP's efforts surreptitiously to gain control over the judiciary.

Supporters: Law Necessary to Help Reform Backward Judiciary

17. (C) Several attorneys and academics told us the "misplaced" and "overblown" criticism was clouding the real problem -- the desperate need to modernize a backward judiciary. Dilek Kurban, Democratization Program Director at the Turkish Economic and Social Studies Foundation (TESEV) and a Columbia Law School graduate, told us the judiciary's problems begin early: none of Turkey's best universities have law faculties. As a result, top-tier high school students generally opt for a career path other than law. Galatasaray University Constitutional Law professor Emre Oktem agreed, telling us law students generally speak no foreign languages and have never traveled outside of Turkey. Law faculties encourage rote memorization over critical

thinking. Upon graduating, the top law students nearly always opt to become private attorneys with international law firms; second tier graduates become domestic attorneys; and the rest are left to fill the ranks of Turkey's judiciary.

¶18. (C) Following graduation, future judges and prosecutors spend a year together in pre-service training at the Justice Academy in Ankara. There they are taught both their job requirements and the importance of protecting the principles of the Turkish state. Once assigned around the country, prosecutors and judges share housing units and office space and socialize together, along with other government officials. This environment, according to Kurban, molds judges and prosecutors into fervently nationalistic functionaries who prioritize protecting the state over individual freedoms.

¶19. (C) Kurban hopes the new law will inject fresh life and critical thinking into the judiciary by allowing young practicing attorneys to enter its ranks. Oktem conceded the new law would allow AKP to influence appointments but was on balance positive because it would introduce a new pluralism into the judiciary as well. Human Rights Association Chair Husnu Ondul saw the new law as a step toward reforming a judiciary that sees its primary duty as protecting the very "state" (e.g., errant police and Jandarma officers) it should be sanctioning.

Law Falls Short of EU Recommendations

¶10. (C) The EU Commission's legal expert Ulusoy told us the new law falls short of EU requirements on judicial independence. The EU's Advisory Mission on the Functioning of the Judiciary in Turkey had concluded that MOJ involvement in selecting judges and prosecutors contravenes EU and UN rules on judicial independence. Either the High Council of Judges and Prosecutors or a fully independent Justice Academy should have that role. Still, Ulusoy believes that allowing

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attorneys to enter the judiciary will help dilute its current inflexible ranks with fresh, independent thinkers.

¶11. (C) Comment: The Turkish media have depicted this issue as a battle for total control over the judiciary. It illustrates at once the need for reform, the difficulties of achieving that reform and Turkish establishment concerns that AKP already controls too many levers of power. The reality is that the new law may help spur badly needed judicial reform by allowing private attorneys to enter a previously highly insular realm. The law is imperfect -- too small a step -- but there is little chance it will fundamentally alter the make-up and mindset of the judiciary anytime soon. Much remains to be done to bring about the fundamental structural and educational reforms necessary to transform a backward and corrupt judiciary (Transparency International's just-released 2007 Global Corruption Report gave Turkey's judiciary a rating of 4 on a scale of 1 to 5, where 5 is "highly corrupt") into a modern, objective, and accountable institution. End comment.

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